

CHAPTER 20.150

NONCONFORMING USES

Part 1 General Provisions

20.150.010 Purpose

The provisions in this Chapter are intended to permit the continued operation of legal nonconforming uses and continued use and replacement of legal nonconforming structures in a manner that does not impair the public peace, health, safety morals or welfare. The provisions are also intended to encourage the eventual elimination of legal nonconforming uses.

20.150.020 General Provisions

- A. A legal nonconforming use may be continued indefinitely, but if such use is discontinued or abandoned for a period of six (6) months or more, it shall thereafter conform to the provisions of this Title, unless the nonconforming use is reinstated with issuance of a Special Use Permit in accordance with Chapter 20.100.
- B. A legal non-conforming structure may continue to be used or replaced as follows:
 - 1. The restoration and/or replacement of a legal nonconforming structure wholly or partially destroyed by a catastrophic event or sudden cause which is beyond the control of the property owner, and which could not otherwise have been prevented by reasonable care and maintenance of the structure is permitted.
 - 2. Failure to apply for a building permit within nine (9) months of destruction or failure to begin construction within three (3) months of the issuance of a building permit shall be deemed to be discontinuation or abandonment of the use pursuant to Subsection A.
 - 3. The building or structure, as restored, shall not occupy any portion of the lot or parcel not occupied by the building or structure when such destruction occurred unless the building or structure as restored will comply with all development regulations prescribed by this Title for the district in which the lot or parcel is situate.
 - 4. No building or structure shall be restored pursuant to this Section unless all Development and building permits required for new conforming uses in the district in which the use is located have been secured.

5. Irrespective of where the building or structure, as restored, is located on the lot or parcel:
 - a. it shall not have a greater floor area than the building or structure contained when such destruction occurred; and
 - b. it shall not exceed the height of nor the number of stories contained in the building or structure at the time of such destruction; and
 - c. the off-street parking spaces and off-street loading spaces situate on the lot or parcel at the time of such destruction shall not be diminished in number or size.
- C. Any legal nonconforming use or structure which is enlarged, altered, converted, or changed, as provided in this Chapter, is subject to the parking requirements of Section 20.90.210 regarding any change in use.

20.150.030 PD Zoning Exception

- A. Upon the rezoning of land to a (PD) Planned Development combined district, other than by Council initiation, only those uses specified in the General Development Plan therefore, as either temporary or permanent uses, are permitted in the Planned Development District.
- B. Any use which becomes legal nonconforming in the base district because of a (PD) Planned Development rezoning initiated by Council may be continued but only until such time as a PD Permit pursuant to such rezoning is implemented on the site containing the legal nonconforming use(s).

20.150.040 Legal Nonconforming Use Subject to a Previously Issued Conditional Use Permit

- A. Whenever an existing use subject to a previously issued valid Conditional Use Permit becomes a legal nonconforming use, it remains subject to all of the provisions and requirements of Conditional Use Permit provisions of this Title.
- B. If a Conditional Use Permit for a legal nonconforming use contains a time-limit condition, the owner of the lot or parcel for which Permit was issued may apply to the City for renewal of the Conditional Use Permit, notwithstanding the fact that the existing use is not a permitted or conditional use in the District in which it is located or, that it does not conform to the regulations of such District.
- C. The owner of a lot or parcel, subject to a lapsed time-limited Conditional Use Permit, may apply for a new Conditional Use Permit, subject to the Subsection B above, if the use for which the Conditional Use Permit is sought has continued to exist without interruption since

the lapse of the Conditional Use Permit. Nothing in this provision shall exempt such owner from the obligation to apply for a new Conditional Use Permit in accordance with Chapter 20.100, and such owner shall be in violation of this Title, and subject to all remedies therefore, whenever a time-limited Conditional Use Permit lapses and no new Conditional Use Permit has been issued.

20.150.050 Nonconforming Use - Expansion and Enlargement

- A. Any legal nonconforming use may be expanded only upon issuance of and in compliance with a Special Use Permit, or Conditional Use Permit for uses which this Code would require a Conditional Use Permit, in accordance with the provisions in Chapter 20.100. Expansion includes, but is not limited to, the intensification of a use with or without an increase in floor area.
- B. Any building or structure which conforms with the development standards of the district, the use of which is a legal nonconforming use, may be enlarged or structurally altered, only upon a finding that such enlargement or structural alteration does not expand or allow for subsequent expansion of the legal nonconforming use, and does not significantly increase any identified impact such as traffic, on-street parking or noise . Such determination shall be made as part of the consideration of any Site Development Permit required for such enlargement or alteration by other provisions of this Code. If no Site Development Permit is required, such enlargement or alteration shall be made only upon the issuance of and in compliance with a Special Use Permit as provided in Chapter 20.100.

20.150.060 Nonconforming Structure - Expansion and Enlargement

- A. Any legal nonconforming structure, the use of which is not legal nonconforming, may be expanded upon such land only upon issuance of and in compliance with a Site Development Permit in accordance with the applicable development standards of the zoning district said structure is in. Nothing in this provision permits the further diminution of an existing nonconforming development standard except as otherwise provided for in this Title.
- B. Structures that do not conform to the current parking requirements are subject to the parking requirements of Section 20.90.210 regarding any change in use.

20.150.070 Change of Use

- A. For the purposes of this Section, a “Change in Use” shall be defined as a change from one enumerated use to a different enumerated use as set forth in Tables 20-30, 20-50, 20-90, 20-110 and 20-140.
- B. A legal nonconforming use may be changed to another nonconforming use of a like nature upon issuance of and in compliance with a Special Use Permit, provided such use is not subject to a Conditional Use Permit or Special Use Permit under any other provisions of this

Title. Any enlargement made in conjunction with such change must conform to the provisions of this Chapter.

- C. Two uses are of "like nature" when the Director determines that they are treated in essentially the same manner for all purposes under this Title and that the new use will not create an increase in such impacts as traffic, parking or noise. The "like nature" determination shall be made as part of the consideration of a Special Use Permit as provided in this Title.
- D. Where a lot or parcel which contains a legal nonconforming use also contains a conforming use, the existing conforming use may be changed to another conforming use only upon a finding that such proposed conforming use is compatible with such legal nonconforming use in terms of architecture as well as use. Such determination of compatibility shall be made as part of the consideration of any Site Development Permit, Conditional Use Permit, or Special Use Permit required for such change by other provisions of this Code. If no such permits are required, such change in use shall be made only upon the issuance of and in compliance with a Special Use Permit as provided in this Title.

20.150.080 Addition of New Uses

- A. No additional nonconforming use may be added to a property which contains a legal nonconforming use.
- B. Additional uses which conform to the provisions of this Title may be added to a property which contains a legal nonconforming use only upon a finding that such proposed additional use is compatible with the existing nonconforming use or uses in terms of architecture as well as use. Such determination of compatibility shall be made as part of the consideration of any Site Development Permit or Conditional Use Permit required for such additional use by other provisions of this Code. If no Site Development Permit or Conditional Use Permit is otherwise required, such additional use shall be added only upon the issuance of and in compliance with a Special Use Permit as provided in this Title.

20.150.090 Nonconforming Residential Use Regulations

Where property in a nonresidential district contains a legal nonconforming residence, such use shall continue to maintain the minimal side and front set backs as if it were located in an R-1-8 Residence District and shall in addition comply with all other applicable regulations and development standards for lots with a one-family dwelling.

20.150.100 Subdivision

A parcel which contains a legal nonconforming use or structure may be subdivided pursuant to Title 19 of this Code only if such subdivision does not, in any way, increase the degree or extent of the nonconformity.

20.150.110 Special Use Permits - Findings

- A. The Director, or the Planning Commission, on appeal, shall issue a Special Use Permit for a nonconforming use only if the following findings can be made:
1. In case of an application for a Special Use Permit for reinstatement of a legal nonconforming use:
 - a. No more than eighteen (18) months has elapsed between the date the legal nonconforming use was first discontinued or abandoned and the date the application for the Special Use Permit was filed and found complete; and
 - b. The conversion to a conforming use would create undue hardship under the particular circumstances presented.
 - c. The finding required by subsection a, above does not need to be made for reinstatement of residential legal nonconforming uses or the residential mixed use residential/commercial legal nonconforming uses.
 2. In case of an application for a Special Use Permit for expansion or enlargement:
 - a. The expansion of the use upon the land, or the alteration or enlargement of the building or structure, does not significantly increase any identified impact such as traffic, on-street parking or noise.
 3. In the case of an application for a Special Use Permit for a change in use, it is found that:
 - a. The nonconforming use is being changed to a use of like nature.
 4. In case of an application for a Special Use Permit for determination of compatibility of nonconforming and conforming uses when either changing a conforming use to another conforming use or adding a conforming use, it is found that:
 - a. The change or addition of a conforming use on site is compatible with any existing nonconforming use on site in terms of architecture as well as use.
- B. In addition to the findings required by Subsection A, no Special Use Permit shall be issued, pursuant to this Part, unless it is found that:
- a. The Permit will not impair the character and integrity of the neighborhood; and
 - b. The Permit will not impair the utility or value of adjacent property or the general welfare of the neighborhood; and

- c. The Permit is not detrimental to the public peace, health, safety, morals or welfare.

Part 2

Adverse Public Impact

20.150.200 Non conforming Uses - Adverse Public Impact

- A. Notwithstanding Section 20.150.020, any lawful use rendered nonconforming due to annexation or a change in Title 20 of this Code which resulted in:
 - 1. A new or changed zoning district classification of the site; or
 - 2. Prohibition of the use in the existing zoning district; or
 - 3. The requirement for a Conditional Use Permit for the use;shall be deemed a legal nonconforming use for the purposes of this Part only as long as such use does not create an adverse public impact as specified in the following Section.
- B. Use of the procedures contained in the following Sections shall not be deemed to confer legal nonconforming status on any use which is subsequently determined to have been illegal at the time that the Order to Show Cause was issued.

20.150.210 Adverse Public Impact

- A. An adverse public impact may be demonstrated by:
 - 1. Evidence of noncompliance with any condition or any law, ordinance or prior permits; or
 - 2. Evidence of a substantially changed condition in neighborhood; or
 - 3. Evidence that the use is creating a nuisance as defined by this Title; or
 - 4. Evidence that the use substantially impairs the public peace, health, safety, morals or welfare.
- B. Evidence of an adverse public impact may include, but not be limited to, impacts such as noise, traffic, parking, crime, or disturbance of the health, safety, peace or welfare of the neighboring public by owners, managers, residents, patrons or guests of the subject property.

20.150.220 Order to Show Cause

- A. The Director of Planning may issue an Order to Show Cause why a legal nonconforming status should not be revoked and the use be subject to a Conditional Use Permit or terminated due to adverse public impact.
- B. Such Order shall state the basis of the adverse public impact(s), specify the facts and allegations upon which it is based and shall give notice of the time and place of a hearing to be held before the Planning Commission.

20.150.230 Notice

- A. Notice of the Order to Show Cause and public hearing shall be given in accordance within Section 20.100.190 of this Title. A copy of the Order shall be included with the Notice.
- B. In addition to the Notice required by Section 20.100.190, a copy of the Order and Notice shall be mailed to "Occupant" at the address of the real property subject to the Order of Show Cause.

20.150.240 Hearing on Order to Show Cause

- A. At the time specified in the Order to Show Cause, or at such later time to which the matter is continued, the Planning Commission shall hold a hearing to the status of the legal nonconforming use.
- B. The Planning Commission, or the City Council on appeal, shall hear and consider all relevant testimony and evidence presented.
- C. The Planning Commission, or the City Council on appeal, shall determine whether or not the legal nonconforming use shall be:
 - 1. Permitted to continue as a legal nonconforming use; or
 - 2. Allowed to continue subject to a Conditional Use Permit and conditions which will prevent the adverse public impact demonstrated pursuant to Section 20.150.250; or
 - 3. Terminated pursuant to Section 20.150.260.
- D. Notice of the decision of the Planning Commission, or the City Council on appeal, shall be sent by certified mail to the owners and appellants, if any, and to any other person who has, in writing, requested a copy of such decision.

20.150.250 Findings for Requirement of a Conditional Use Permit

- A. The Commission, or the City Council on appeal, may allow the use to continue subject to a Conditional Use Permit issued by the Commission, if a finding is made that:
 - 1. The use constitutes or results in an adverse public impact; and
 - 2. The conditions contained in the Conditional Use Permit will prevent or make insubstantial the adverse public impact(s).
- B. In such case, the use shall for all purposes be treated as a conditional use subject to the terms of the Conditional Use Permit.
- C. The Conditional Use Permit shall not be effective unless the property owner pays the fees for conversion to a Conditional Use Permit as specified in the Schedule of Fees adopted by Resolution of Council.

20.150.260 Findings for Termination of Use

- A. The Commission, or the City Council on appeal, may terminate the legal non-conforming use upon finding that:
 - 1. The use constitutes or results in an adverse public impact; and
 - 2. The adverse public impact(s) cannot be adequately abated, substantially corrected or rectified with a Conditional Use Permit; or
 - 3. There are uncorrected violations of a city permit, ordinance or state law.
- B. Upon determining that a nonconforming use shall be terminated, the Planning Commission, or the City Council on appeal, shall also determine what, if any, amortization period is necessary to allow the property owner a reasonable period to terminate the use commensurate with the nature and extent of the owner's investment in the property.
- C. In determining the amortization period, the Commission, or the City Council on appeal, shall consider, among other factors:
 - 1. The length of time the property has been owned by the property owner;
 - 2. The owner's ability to readily convert the use to a use which is permitted within the zoning district; and
 - 3. The difference, if any, between the value of the prior use and the value of the permitted uses; and

4. The impacts of allowing the use to continue.

20.150.270 Appeal of Commission's Decision

- A. Any action taken by the Planning Commission, after a hearing on an Order to Show Cause, may be appealed to the City Council by filing a written notice of appeal with the Director within ten (10) calendar days after a copy of the decision of the Planning Commission has been placed in the mail to the owners of the subject property.
- B. Any owner or tenant of the subject property or any property within three (300) hundred feet of the subject site may file such an appeal.
- C. The City Clerk shall set the date of the Public Hearing by the Council on the appeal which date shall not be less than ten (10) nor more than sixty (60) days after the date on which the appeal was filed. Notice of Hearing shall be provided in accordance with Section 20.100.190.
- D. The City Council shall hold at least one public hearing on the matter. The hearing of the Council shall be de novo.
- E. The decision of the City Council shall be final.
- F. The City Clerk shall mail a certified copy of the decision of the City Council to the owner and tenant(s) of the property and, if different, the appellant.

Part 3 Amortization

20.150.300 Amortization - Public Payphones

- A. Any public pay telephone governed by the provisions of Part 12 of Chapter 20.80 which was a legal use on February 19, 2001 but which did not conform to the provisions of Part 12 of Chapter 20.80 on that date shall be terminated within six (6) months from February 19, 2001.
- B. Any public pay telephone governed by the provisions of Part 12 of Chapter 20.80 that was a legal use on September 28, 2001 but did not conform to the additional provisions of that Part 12 that became effective on that date, regarding location of a public pay telephone on a wall containing a primary entrance and/or regarding a minimum five (5) foot pedestrian access between the public pay telephone and the private property line, shall be terminated within six (6) months from September 28, 2001.

20.150.310 Extension of Time for Termination of Nonconforming Use

The operator of a nonconforming use as described in Section 20.150.300 may apply under the provisions of this Section to the City Council for an extension of time within which to terminate the nonconforming use.

A. Time and Manner of Application

An application for an extension of time within which to terminate a use made nonconforming by the provisions of Section 20.150.300 may be filed by the owner of the real property upon which such use is operated or by the operator of the use. Such an application must be filed with the City Clerk at least ninety (90) days prior to the time established in Section 20.150.300 for termination of such use.

B. Content of Application; Fees

The application shall state the grounds for requesting an extension of time. The filing fee for such application shall be as set forth in the Schedule of Fees established by resolution of the City Council.

C. Hearing on Application

Upon filing of an application for extension, the City Clerk shall, subject to the rules of the City Council as to the hour and place of public hearings which shall be conducted by it, set a date for a public hearing which shall be held by the City Council on said application. Said date of hearing shall be not less than twenty (20) nor more than sixty (60) days from and after the date said application was filed and all filing fees were paid.

D. Notice of Hearing

The City Clerk shall cause notice of the time and place of the hearing on the application to be given in accordance with the procedure set forth in Section 20.100.190 of this Title.

E. Approval of Extension; Findings

Within a reasonable time after the public hearing on an application for extension has been conducted, the City Council shall by resolution take action on the request for the extension. Unless the extension is approved by at least a majority of the Council, it shall be deemed denied. An extension under the provisions of this Section shall be for no more than one (1) year and shall be approved only if the City Council makes all of the following findings:

1. The applicant has made a substantial investment (including but not limited to lease obligations) in the property or structure on or in which the nonconforming use is conducted; such property or structure cannot be readily converted to another use; and such investment was made prior to February 19, 2001.

2. The applicant will be unable to recoup said investment as of the date established for termination of the use; and
3. The applicant has made good faith efforts to recoup the investment.

20.150.320 Amortization - Temporary Structures

Any temporary structure which meets the definition of Section 20.200.1240 which existed on February 19, 2001 and has remained in continuous use and which does not conform to the provisions of this Title shall be terminated within six (6) months from February 19, 2001.

20.150.330 Amortization - Incidental dancing and music

Any incidental music or dancing associated with a bona fide public eating establishment or drinking establishment which is not part of a conditional use permit, and which was a legal use on September 28, 2001 shall be terminated within six (6) months from September 28, 2001. All incidental music after this date shall be as defined in Section 20.200.940.